



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/603,043	06/24/2003	Jason P. McDevitt	KCX-375-CON (16068.1)	1869
22827	7590	03/17/2005	EXAMINER	
DORITY & MANNING, P.A. POST OFFICE BOX 1449 GREENVILLE, SC 29602-1449			COLE, LAGRA C	
			ART UNIT	PAPER NUMBER

1744

DATE MAILED: 03/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/603,043

Applicant(s)

MCDEVITT ET AL.

Examiner

Laura C Cole

Art Unit

1744

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 January 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 46-70 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 46-56 is/are allowed.
- 6) ☒ Claim(s) 57-70 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. Claims 57-70 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Each of Claims 57 and 70 recite the limitation “a texturized surface **configured** to clean the teeth and gums of a user...” It is unclear as to what “configured” means.

Furthermore, as defined by *The American Heritage® Dictionary of the English Language, Fourth Edition Copyright © 2000 by Houghton Mifflin Company* “texturized” is defined as “to give a desired texture to by a special process” and is different from a surface having a texture.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 57-59 and 61-67 are rejected under 35 U.S.C. 103(a) as being unpatentable over Carr, USPN 5,765,252 in view of McCarver et al., USPN 5,362,306.

Carr discloses the claimed invention including a first hollow member (60 or 82) having an open end (see Figures), the hollow member further defining a “texturized” surface with a texture (64 or 88), a second hollow member (68 or 84) having an open

Art Unit: 1744

end (see Figures), the second hollow member comprising a base web (Column 6 Lines 10-13), and a connecting portion (70 or portion between fingers 82 and 84) for connecting the first hollow member to the second hollow member. The second hollow member defines a texturized surface (88). The first hollow member and second hollow member include a closed end located opposite each open end (see Figure 8). Also, an additive has been applied comprising of fluorides or teeth cleansers (Column 2 Lines 33-35). Carr does not disclose that the base web or that the hollow members comprise an elastic nonwoven comprising an elastic component and a non-elastic component.

McCarver et al. discloses a form fitting surgical device for covering an extremity that forms a hollow member (see Figures; Column 2 Lines 39-44, Column 3 Lines 12-27) and is made from an elastic nonwoven comprising an elastic component (36) and a non-elastic component (32 or 34). The hollow member includes a first panel (layer 36) attached to a second panel (layer 34), while the second panel comprises a non-elastic material (Column 4 Lines 62-64, as it is made from a "film"). The device is a laminate that is bonded, specifically stretch-bonded (Column 2 Lines 32-41).

It would have been obvious for one of ordinary skill in the art to modify Carr so that both the first and second hollow members of Carr are comprised of an elastic nonwoven comprising an elastic component and a non-elastic component, as McCarver et al. teach, so that the device is form fitting.

3. Claims 57-59 and 61-66 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ness, USPN 2,041,262 in view of McCarver et al.

Ness discloses the claimed invention including a first hollow member (8a) having an open end (see Figure 1), the hollow member further defining a "texturized" surface with a texture (9), a second hollow member (8b) having an open end (see Figure 1), the second hollow member comprising a base web (Column 1 Lines 47-51), and a connecting portion (8c) for connecting the first hollow member to the second hollow member. The base web of the first hollow member and the base web of the second hollow member both comprise an elastic nonwoven material such as rubber (Column 1 Lines 47-51). The second hollow member defines a texturized surface (9). The first hollow member and second hollow member include a closed end located opposite each open end (see Figures). Ness does not disclose that the base web or that the hollow members comprise an elastic nonwoven comprising an elastic component and a non-elastic component.

McCarver et al. discloses a form fitting surgical device for covering an extremity that forms a hollow member (see Figures; Column 3 Lines 12-27) and is made from an elastic nonwoven comprising an elastic component (36) and a non-elastic component (32 or 34). The hollow member includes a first panel (layer 36) attached to a second panel (layer 34), while the second panel comprises a non-elastic material (Column 4 Lines 62-64, as it is made from a "film"). The device is a laminate that is bonded, specifically stretch-bonded (Column 2 Lines 32-41).

It would have been obvious for one of ordinary skill in the art to modify Ness so that both the first and second hollow members of Ness are comprised of an elastic

Art Unit: 1744

nonwoven comprising an elastic component and a non-elastic component, as McCarver et al. teach, so that the device is form fitting to a finger.

4. Claims 57-59 and 61-66 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rescigno, USPN 4,884,581 in view of McCarver et al.

Rescigno discloses the claimed invention including a first hollow member (22) having an open end (see Figure 6), the hollow member further defining a "texturized" surface with a texture (16, 20; Column 3 Lines 62-66), a second hollow member (24) having an open end (see Figure 6), the second hollow member comprising a base web (Column 6 Line 67 to Column 4 Line 1), and a connecting portion (18) for connecting the first hollow member to the second hollow member. The second hollow member defines a texturized surface (16, 21). The first hollow member and second hollow member include a closed end located opposite each open end (see Figures 6-10). Rescigno does not disclose that the base web or that the hollow members comprise an elastic nonwoven comprising an elastic component and a non-elastic component.

McCarver et al. discloses a form fitting surgical device for covering an extremity that forms a hollow member (see Figures; Column 3 Lines 12-27) and is made from an elastic nonwoven comprising an elastic component (36) and a non-elastic component (32 or 34). The hollow member includes a first panel (layer 36) attached to a second panel (layer 34), while the second panel comprises a non-elastic material (Column 4 Lines 62-64, as it is made from a "film"). The device is a laminate that is bonded, specifically stretch-bonded (Column 2 Lines 32-41).

Art Unit: 1744

It would have been obvious for one of ordinary skill in the art to modify Rescigno so that both the first and second hollow members of Rescigno are comprised of an elastic nonwoven comprising an elastic component and a non-elastic component, as McCarver et al. teach, so that the device is form fitting to a finger.

5. Claim 60 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ness, in view of McCarver et al. as applied to Claim 57 in above paragraph 3, and in further view of Porcelli, USPN 5,678,273.

Ness and McCarver et al. disclose all elements above in Paragraph 3, however does not include the textured surface comprising of looped bristles.

Porcelli teaches an oral hygiene applicator that comprises looped bristles so that they are capable of acting omnidirectionally in cleaning teeth and massaging gums regardless of the movement of the applicator and because the loops act as scoops to capture food particles (Column 2 Lines 27-41).

It would have been obvious for one of ordinary skill in the art to substitute the cleaning elements of Ness and McCarver et al. for the looped bristle texture that Porcelli teaches so that a more effective brushing and cleaning of teeth and gums may occur.

6. Claim 60 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rescigno in view of McCarver et al. as applied to Claim 57 in above Paragraph 4, and in further view of Meunier, USPN 2,599,191.

Rescigno and McCarver et al. disclose all elements above in Paragraph 4, however does not include the textured surface comprising of looped bristles.

Art Unit: 1744

Meunier discloses a dental brush having looped bristles (9) as a cleaning surface that is beneficial for those having sensitive mouth tissues (Column 1 Lines 4-23.)

It would have been obvious for one of ordinary skill in the art to substitute the cleaning elements of Rescigno and McCarver et al. for the looped bristle texture that Meunier teaches in order to accommodate more sensitive gums.

7. Claim 60 is rejected under 35 U.S.C. 103(a) as being unpatentable over Carr, in view of McCarver et al. as applied to Claim 57 in above Paragraph 2, and in further view of Porcelli.

Carr and McCarver et al. disclose all elements above in Paragraph 2, however does not include the textured surface comprising of looped bristles.

Porcelli teaches an oral hygiene applicator that comprises looped bristles so that they are capable of acting omnidirectionally in cleaning teeth and massaging gums regardless of the movement of the applicator and because the loops act as scoops to capture food particles (Column 2 Lines 27-41).

It would have been obvious for one of ordinary skill in the art to substitute the cleaning elements of Carr and McCarver et al. for the looped bristle texture that Porcelli teaches so that a more effective brushing and cleaning of teeth and gums may occur.

8. Claims 57-59, 61-66, and 69 are rejected under 35 U.S.C. 103(a) as being unpatentable over Adams, IV, USPN 3,696,821 in view of McCarver et al., and further in view of Carr.

Adams, IV discloses the claimed invention including a first hollow member (12, there are two separate elements marked "12" in the Figures) having an open end

Art Unit: 1744

(where finger "15" is inserted), the hollow member having a surface with a texture (a physical surface of the device inherently has a texture, wherein "texture" is defined as "the distinctive physical composition or structure of something, especially with respect to the size, shape, and arrangement of its parts" according to *The American Heritage® Dictionary of the English Language, Fourth Edition Copyright © 2000 by Houghton Mifflin Company*), a second hollow member (other portion "12") having an open end (where other finger "15" is inserted), and a connecting portion (11') wherein the connecting portion comprises dental floss (Column 2 Lines 41-45). Adams, IV does not disclose that at least the first hollow member or the second hollow member contains an elastic nonwoven comprising an elastic component and a non-elastic component. Adams, IV does not disclose that the first hollow member defines a "texturized surface configured to clean the teeth and gums of a user."

McCarver et al. discloses a form fitting surgical device for covering an extremity that forms a hollow member (see Figures; Column 3 Lines 12-27) and is made from an elastic nonwoven comprising an elastic component (36) and a non-elastic component (32 or 34). The hollow member includes a first panel (layer 36) attached to a second panel (layer 34), while the second panel comprises a non-elastic material (Column 4 Lines 62-64, as it is made from a "film"). The device is a laminate that is bonded, specifically stretch-bonded (Column 2 Lines 32-41).

Carr discloses all elements discussed above in Paragraph 2, including a "texturized surface" of bristles or bumps upon a hollow member in order to provide a surface for cleaning teeth (Column 2 Lines 16-45).

Art Unit: 1744

It would have been obvious for one of ordinary skill in the art to modify Adams, IV so that both the first and second hollow members of Adams, IV are comprised of an elastic nonwoven comprising an elastic component and a non-elastic component, as McCarver et al. teach, so that the device is form fitting to a finger. It would have been obvious for one of ordinary skill in the art to modify the surface of Adams, IV to include a "texturized surface", as Carr teaches, in order to provide a tooth cleaning means in order to more thoroughly clean the oral cavity of a user.

9. Claim 70 is rejected under 35 U.S.C. 103(a) as being anticipated by Adams, IV, in view of Carr.

Adams, IV discloses the claimed invention including a first hollow member (12, there are two separate elements marked "12" in the Figures) having an open end (where finger "15" is inserted) the hollow member having a surface with a texture (also a physical surface inherently has a texture, wherein "texture" is defined as "the distinctive physical composition or structure of something, especially with respect to the size, shape, and arrangement of its parts" according to *The American Heritage® Dictionary of the English Language, Fourth Edition Copyright © 2000 by Houghton Mifflin Company*), a second hollow member (other portion "12") having an open end (where other finger "15" is inserted), and a connecting portion (11') wherein the connecting portion comprises dental floss (Column 2 Lines 41-45). Adams, IV does not disclose that the first hollow member defines a "texturized surface configured to clean the teeth and gums of a user."

Art Unit: 1744

Carr discloses all elements discussed above in paragraph 2, including a “texturized surface” of bristles or bumps upon a hollow member in order to provide a surface for cleaning teeth (Column 2 Lines 16-45).

It would have been obvious for one of ordinary skill in the art to modify the smooth surface of Adams, IV to include a “texturized surface”, as Carr teaches, in order to provide a tooth cleaning means in order to more thoroughly clean the oral cavity of a user.

Allowable Subject Matter

10. Claims 46-56 are allowed.

11. Claim 68 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

12. The following is a statement of reasons for the indication of allowable subject matter: None of the prior art made of record teaches or suggests a plurality of spaced apart microcuts. Also, none of the prior art made of record includes a cleaning device having a first hollow member having an open end for the insertion of a first finger, the hollow member defining a texturized surface, a second hollow member having an open end, at least the first hollow member or second hollow member containing an elastic nonwoven comprising an elastic component and a non-elastic component, further wherein the texturized surface comprises a point unbonded material, the point unbonded material comprising a plurality of raised tufts surrounded by bonded regions.

Applicant's Arguments

13. In the response filed 25 January 2005, the Applicant contends that:

A. There is no motivation to modify the primary references (Carr, Ness, Rescigno) by combining them with the teachings of McCarver et al. The teachings of the references must be viewed in their entirety. Carr, Ness, and McCarver et al. are directed to tooth and/or tongue cleaning devices while McCarver et al. is directed to a surgical stockinette. Also, McCarver et al. does not disclose a textured surface.

B. There is no motivation to combine the finger brush of Carr including bristles with the smooth surface disclosed in McCarver, et al.

C. There is no motivation to combine the finger brush of Ness including projections with the smooth surface disclosed in McCarver, et al.

D. There is no motivation to combine the tongue holder of Rescigno with the smooth surface disclosed in McCarver et al.

E. The combination of Rescigno, McCarver et al., and Bori (and the combination of Ness, McCarver et al., and Bori) is an improper combination. There is no motivation to use dental floss as the attachment means of Rescigno or Ness.

Response to Arguments

14. Applicant's arguments with respect to claims 57-70 have been considered but are moot in view of the new ground(s) of rejection.

Applicant's arguments A-D have been fully considered but they are not persuasive. McCarver et al. provides a teaching of an elastic nonwoven material that contains an elastic component and a non-elastic component wherein the materials are

Art Unit: 1744

specifically used in order to provide a "form-fitting" material that conforms to the shape of a user's extremity (see above, particularly paragraphs 3-5). Therefore, it would have been obvious for one of ordinary skill in the art to modify the flexible hollow member of Carr, Ness, and Rescigno so that both the first and second hollow members are comprised of an elastic nonwoven comprising an elastic component and a non-elastic component, as McCarver et al. teach, so that the device is form fitting to a finger. Each of the devices of Carr, Ness, and Rescigno has a flexible outer surface and McCarver et al. discloses a "flexible" or "elastic" device. In addition, in response to applicant's argument that Rescigno is a tongue holder and not a cleaning device, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 370 F.2d 576, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 312 F.2d 937, 939, 136 USPQ 458, 459 (CCPA 1963).

Applicant's argument E, filed 25 January 2005, with respect to the rejection(s) of claim(s) 69-70 under Rescigno, McCarver et al., and Bori (and the combination of Ness, McCarver et al., and Bori) have been fully considered and are persuasive. A new ground(s) of rejection is made in view of Adams, IV, USPN 3,696,821.

Conclusion

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Laura C Cole whose telephone number is (571) 272-1272. The examiner can normally be reached on Monday-Thursday, 7:30am - 5pm, alternating Fridays.

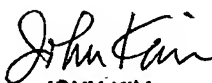
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Kim can be reached on (571) 272-1142. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

LCC

LCC

10 March 2005


JOHN KIM
SUPERVISORY EXAMINER
GROUP 1700